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Free Carpenter/pc  
SPU MarshallDeck Ord  
April 11, 2011  
Version #5a

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**ORDINANCE \_\_\_\_\_**

AN ORDINANCE relating to Seattle Public Utilities; declaring as surplus certain property rights in Seattle Public Utilities property in the 10300 block of 47<sup>th</sup> Avenue Southwest in Seattle, Washington; and authorizing the Director of Seattle Public Utilities to execute and convey an easement for such surplus property rights to Gary G. St. Arnaud and Ginger L. Marshall.

WHEREAS, in 1987, The City of Seattle, through its then Engineering Department, acquired certain property located in the 10300 block of 47<sup>th</sup> Avenue Southwest in Seattle, Washington (the "Property") that had been previously affected by a landslide; and

WHEREAS, after acquisition, the Engineering Department replaced a damaged sewer line and stabilized the slope; and

WHEREAS, in 1988, the Engineering Department relocated an eighteen-inch diameter storm drain and an eight-inch diameter sanitary sewer line to their present locations in the southeastern portion of the Property; and

WHEREAS, in 2008, the successor to the Engineering Department, Seattle Public Utilities, discovered a deck that encroached into the southeastern portion of the Property; and

WHEREAS, the current owners of the encroaching deck have requested the right to maintain the deck, and Seattle Public Utilities agrees to grant an easement for the deck over 350 square feet (more or less) of property under the jurisdiction of Seattle Public Utilities;  
NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Pursuant to the provisions of RCW 35.94.040 and after public hearing, the property rights described in the Deck Easement attached hereto as Attachment 1 and depicted in the map attached hereto as Attachment 2 are hereby found and declared to be surplus and no longer necessary for Seattle Public Utilities' provision of municipal utility service.



1 Section 2. The Director of Seattle Public Utilities is hereby authorized to execute and  
2 record the Deck Easement substantially in the form attached hereto and identified as Deck  
3 Easement ("Deck Easement" – Attachment 1).

4 Section 3. In consideration of the grant of easement rights hereby authorized, Gary G.  
5 St. Arnaud and Ginger L. Marshall will pay \$1,340.79 to Seattle Public Utilities and such funds  
6 shall be deposited into the Drainage and Wastewater Fund.  
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1 Section 4. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_,  
5 2011, and signed by me in open session in authentication of its passage this  
6 \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council

11 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

12  
13 \_\_\_\_\_  
14 Michael McGinn, Mayor

15 Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

16  
17 \_\_\_\_\_  
18 Monica Martinez Simmons, City Clerk

19 (Seal)  
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25 Attachment 1 – Deck Easement  
26 Attachment 2 – Map of Deck Easement



ATTACHMENT 1

Recording Requested By And  
When Recorded Mail To:

Seattle City of  
SPU/Real Prop – DWU  
Box Office 34018  
Seattle, WA 98124-4018

**DECK EASEMENT**

Reference # of Documents Released or Assigned: 20080617001483  
Grantor: The City of Seattle, acting by and through Seattle  
Public Utilities  
Grantee: Gary G. St. Arnaud and Ginger L. Marshall  
Legal Description (abbreviated): Portion of Lot B City of Seattle Short Plat No 81-230-  
0270  
Assessor's Tax Parcel ID#: 022303-9328

R/W # 2008-012-002

THIS EASEMENT AGREEMENT granted this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities ("City" or "Grantor"), to **Gary G. St. Arnaud and Ginger L. Marshall**, husband and wife, (the "Grantees").

WITNESSETH: Said Grantor for and in consideration of the sum of One Thousand Three Hundred Forty dollars and 79/100 (\$1,340.79) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants and conveys to the Grantee, a non-exclusive easement for an existing deck with necessary appurtenances ("Deck") over and across the following described property in Seattle, King County, Washington:

Portion of Lot B, City of Seattle Short Plat Number 81-230-0270, recorded under recording number 8309120907, (Lot B being a portion of Tracts 1 and 2, Westwood by the Sound, according to the plat thereof recorded in Volume 27 of Plats, Page 38, in King County, Washington, and a portion of the south 75 Feet of Government Lot 3, Section 2, Township 23 North, Range 3 East, Willamette Meridian, in King County, Washington).

Said portion of Lot B being that wedge-shaped portion southeast of a line twenty (20) feet southeast of and parallel to a base line beginning at the southwestern and southern-most corner of Lot B and continuing N 60° 00' 00" E along the southeastern boundary of Lot B and the extension thereof to southwesterly border of 47<sup>th</sup> Avenue SW.

Containing 347 square feet, more or less.

(the "Easement Area")

Attachment 1 to SPU Marshal Property ORD



ATTACHMENT 1

This easement shall include only such rights in the land above described as the Grantor possesses and that are necessary for the maintenance and repair of the existing elevated deck and retaining wall. Grantees, or their successors or assigns, may not landscape, plant vegetation, reconstruct the deck, or change the land, deck or retaining wall in any way without prior written permission by the Grantor, or its successors or assigns. Any permission granted by Grantor must be recorded with King County. Such permission shall not be unreasonably withheld.

Grantee understands and agrees that no other structures shall be permitted in the Easement Area and that this Easement Agreement is subject to and subordinate to that certain Easement granted to the Washington Natural Gas Company, dated December 11, 1987 and recorded under King County Recording No. 8801040475 ("WNG Easement"). Grantee acknowledges and understands that Washington Natural Gas Company, by and through its successor, Puget Sound Energy, has certain rights within a portion of the Easement Area that prevents any structures from being built. Grantee understands and acknowledges Grantor makes no promises, either express or implied, regarding the compliance of the deck structure with the WNG Easement and the rights of Grantee to keep and maintain such structure, in its present condition or otherwise with respect to Puget Sound Energy as the successor to Washington Natural Gas Company.

The Grantees shall have the right without prior institution of any suit or proceeding at law, at such time as may be necessary, to enter upon the Easement Area for the purposes herein described, without incurring any legal obligation or liability therefore.

The Grantor shall have the right without prior institution of any suit or proceeding at law, at such time as may be necessary, to enter upon the Easement Area without incurring any legal obligation or liability therefore.

The Grantees acknowledge that the City presently has an 18" stormwater mainline and an 8" sanitary sewer within or in the vicinity of the Easement Area.

The Grantor shall at all times have free access to the Easement Area for the operation, maintenance, replacement and repair of its stormwater mainline and sanitary sewer. In the event that the Deck is destroyed or damaged during such operation, maintenance, replacement or repair, the Grantees shall not be entitled to payment for damages to the Deck or for the loss of use of the Deck.

This non-exclusive easement does not supersede the easement rights granted to other parties nor shall it interfere with the City's or other party's facilities in City property.

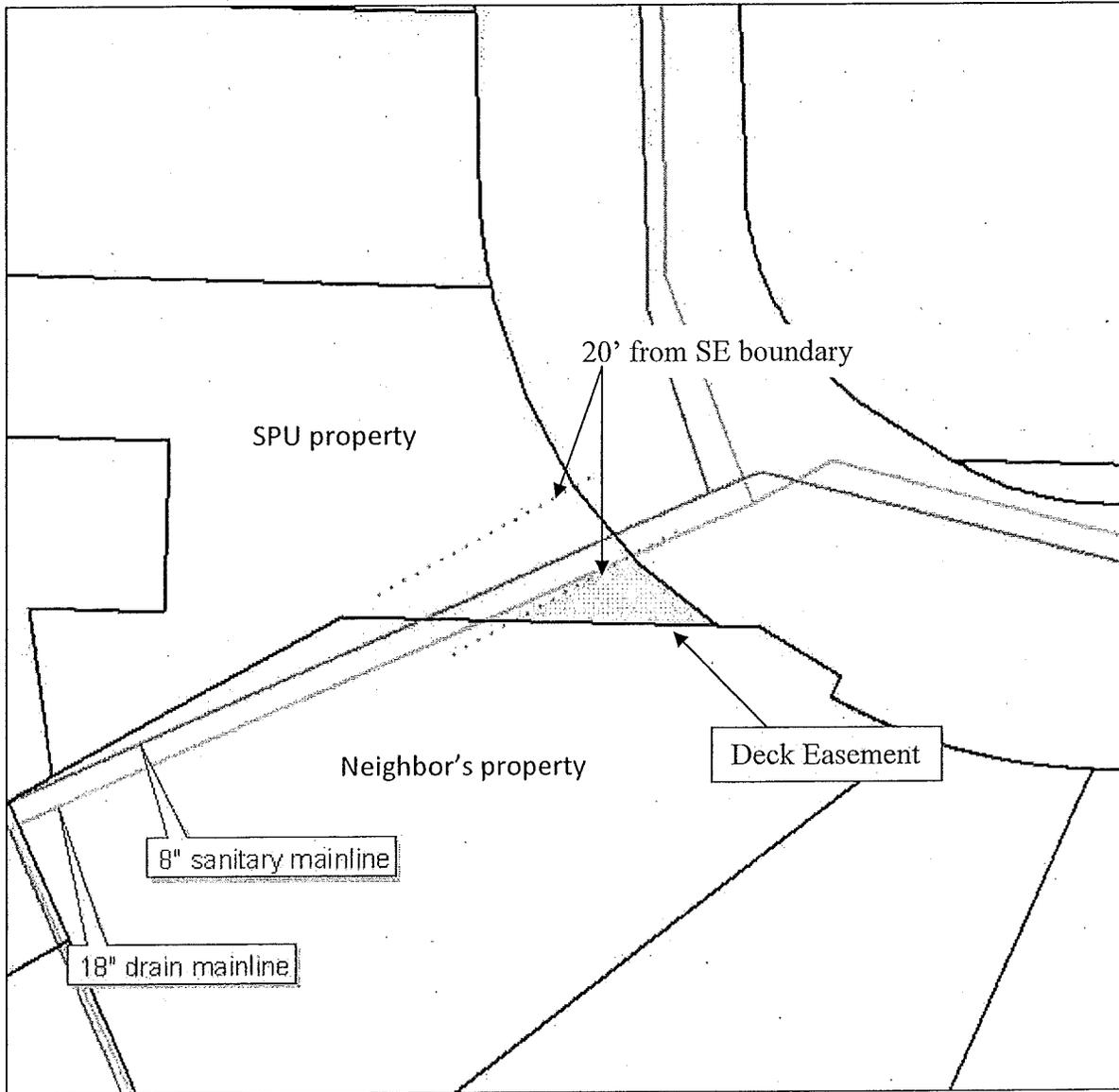
Grantee shall protect, defend, indemnify and hold harmless Grantor, its officials, employees, agents and successors from any and all costs (including attorneys' fees and costs), claims, demands, judgments, damages, or liability of any kind, including personal injury or damages to property, which arise out of, or in any way results from, or are connected to, or due to any negligent acts, omissions or willful misconduct, or any breach of this Easement Agreement by Grantee in Grantee's use of the deck structure, or exercise of any rights granted herein under this Easement Agreement; provided, however, that Grantee shall not be liable to Grantor for any loss, damage or liability resulting from the sole negligence or willful act or omission of Grantor(s), its heirs, legal representatives, successors or assigns, or the concurrent negligence of Grantor(s), its heirs, legal representatives, successors or assigns to the extent of such concurrent negligence.





ATTACHMENT 2

Map of Deck Easement



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Public Utilities	Judith Cross / 386-1814	Karen Grove/ 684-5805

**Legislation Title:**

AN ORDINANCE relating to Seattle Public Utilities; declaring as surplus certain property rights in Seattle Public Utilities property in the 10300 block of 47<sup>th</sup> Avenue Southwest in Seattle, Washington; and authorizing the Director of Seattle Public Utilities to execute and convey an easement for such surplus property rights to Gary G. St. Arnaud and Ginger L. Marshall.

**Summary of the Legislation:**

This legislation declares as surplus to the City's needs an easement for a deck on City property managed by SPU and authorizes the Director of Seattle Public Utilities to grant an easement for the deck to Gary G. St. Arnaud and Ginger L. Marshall in exchange for \$1,340.

**Background:**

The City in 1987 purchased a 9,650 square foot property south of the Fauntleroy Ferry Terminal for slope stabilization and to repair sewer lines damaged in a landslide. A private deck built between 1999 and 2005 without City permission or knowledge encroaches on approximately 350 square feet of the lot. A buyer considering purchasing the property brought this deck encroachment to SPU's attention in 2008. After the party bought the home, SPU granted the owner a permit for the deck.

The current property owners asked to purchase fee title to the City property under their deck to clear the encroachment. However, SPU has an 18" storm drain and an 8" sanitary sewer line near the deck. In lieu of fee title to the property, SPU engineers are recommending the utility grant an easement for the deck, allowing SPU to retain its rights to protect utility infrastructure. This non-exclusive deck easement would give the grantees the right only to maintain and repair the deck. They may not landscape, plant vegetation, reconstruct the deck, or change the land, deck or retaining wall without prior written permission from SPU.

Please check one of the following:

**This legislation does not have any financial implications.**  
(Stop here and delete the remainder of this document prior to saving and printing.)

**This legislation has financial implications.** (Please complete all relevant sections that follow.)



**Anticipated Revenue/Reimbursement: Resulting from this Legislation:**

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2011 Revenue</b>	<b>2012 Revenue</b>
Drainage and Wastewater Fund – 44010	SPU	Other Non-Operating Revenue	\$1,340.79	
<b>TOTAL</b>			\$1,340.79	

**Revenue/Reimbursement Notes:**

These revenues would be derived from the sale of the easement.

**What is the financial cost of not implementing the legislation?**

Sale of easement would not proceed and the encroachment would not be cleared.

**Does this legislation affect any departments besides the originating department?**

No.

**What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

A long-term permit would achieve the same end. However, a long-term permit would similarly require an ordinance.

**Is the legislation subject to public hearing requirements?**

Yes. Pursuant to RCW 35.94.040, a public hearing will be held by the Council's Seattle Public Utilities and Neighborhoods Committee.

**Other Issues:**

None

**List attachments to the fiscal note below:**

N/A





City of Seattle  
Office of the Mayor

May 10, 2011

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that would grant an easement for a deck that encroaches onto City property. The easement provides protections for Seattle Public Utilities' sewer and drainage infrastructure while giving the homeowners legal authority to maintain the structure.

The encroaching deck was built without City permission or knowledge many years ago. The current property owners brought this encroachment to the City's attention before purchasing the property. Seattle Public Utilities staff reviewed the situation and found the deck does not pose a hazard to City infrastructure. The City's Real Estate Oversight Committee recommends the property be sold. During negotiations with the deck owners, both parties agreed an easement would be the most cost-effective means to protect City infrastructure while providing the home owners a legal right to keep their deck where it is.

The sale of this easement will protect City infrastructure, remove an encroachment, and allow citizens the use of their deck. Thank you for your consideration of this legislation. Should you have questions, please contact Pree Carpenter at 386-9754.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

